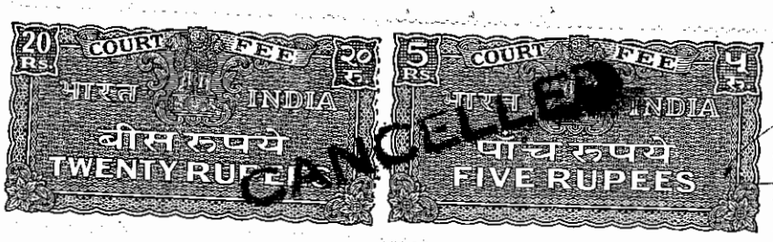

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IN THE HIGH COURT OF MADHYA PRADESH AT JABALPUR

WRIT PETITION NO. 1247 OF 1996

PETITIONER : Krishi Upaj Mandi Samiti, MUNGELI, through its Secretary, Shri K.M. Bhargava, son of Shri B. N. Bhargava, aged about 46 years, resident of MUNGELI, DISTRICT BILASPUR.

VERSUS

RESPONDENTS : 1. Presiding Officer, Labour Court, BILASPUR.

2. Shri Rameshwar Prasad Yadav, son of Shri Ridhi Ram, resident of Village & Post PATHARIA, DISTRICT BILASPUR.

PETITION UNDER ARTICLES 226/227 OF THE CONSTITUTION OF INDIA

1. Particulars of the petitioner :

AFR

HIGH COURT OF CHHATTISGARH AT BILASPUR 55

W.P. No. 1247 of 1996

Petitioner — Krishi Upaj Mandi Samiti, Mungeli

Versus

Respondents — Presiding Officer, Labour Court, Bilaspur & another

Single Bench: Hon'ble Mr. Justice **Satish K. Agnihotri**.

Miss Sunita Jain, Advocate for the petitioner.

Shri R. S. Patel, Advocate for the Respondent No. 2.

ORAL ORDER

(1st March, 2006)

The following order of the Court was passed by **Satish K. Agnihotri, J.**

1. The Respondent No.2 (Shri Rameshwar Prasad Yadav) was employed by the petitioner on daily wages basis on the post of Chowkidar in the year 1984. He continued as Daily Wages Employee till he was discontinued from services, vide order dated 26.1.1991. The respondent No.2, being aggrieved, raised a dispute before the Deputy Labour commissioner, Chhattisgarh region, Raipur. The Deputy Labour Commissioner, Raipur by his order No. 109 dated 11.10.1991, referred the disputed to the Labour Court, Bilaspur under the Industrial Disputes Act. The Reference Case was registered as 89/I.D.A./91.

2. Labour Court by its award dated 23.1.1996 came to the conclusion that the Respondent No.2 has worked for more than 240 days in the preceding year, as the Respondent No.2 has categorically stated that he had worked continuously. The petitioner could not controvert the averments made by the

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Respondent No.2. The petitioner further failed to file any documentary evidence i.e. related muster roll, attendance register etc. The Labour Court has accordingly recorded that the petitioner has worked continuously on daily wages basis. Accordingly the Labour Court by award answered the reference that the termination of the service of the Respondent No.2 is improper and illegal. Consequently, the petitioner was directed to reinstate the Respondent No.2 in service with full back wages and consequential benefits.

3. Being aggrieved the petitioner has filed this petition under Article 226/227 of the Constitution of India, impugning the award dated 23.1.1996, passed by the Labour Court on the ground that the Respondent No.2 has not proved that he had worked for more than 240 days in the preceding year and earlier, and as such, the Respondent No.2 was not entitled to any relief.

4. Learned counsel appearing for the petitioner submits that the petitioner being daily wages employee is even otherwise not entitled to back wages on the principle of 'no work, no pay'. Only the regular employees are entitled to consequential benefits including back wages, in case the termination order is set aside or is declared as invalid by the Court. This was not the case of the Respondent No.2 that he was working on regular basis against any vacant post.

5. Mr. R. S. Patel, learned counsel appearing for the Respondent No.2, per contra, submits that the Respondent No.2 has proved his case up to the hilt that he has worked for more than 240 days in the preceding year and earlier also. The petitioner had

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not submitted any evidence to controvert the submissions of the Respondent No.2.

6. I have heard learned counsel for the parties and perused the record appended to the petition and the return.

7. I have not found any perversity or illegality in the impugned award as the impugned award was passed on the basis of the proper evidence and after applying the proper law to the case. So far as the question of back wages is concerned, admittedly the Respondent No.2 was employed on daily wages and the Respondent No.2 continued to work on the post of Chowkidar. The Respondent No.2 had not claimed any regular appointment. The daily wages employees are paid wages on the basis of the work performed on day to day basis. There is no question of making any payment of back wages. The daily wages employees are required to be engaged on the basis of availability of work and are paid the wages on that basis. Thus, the impugned award to the extent of grant of back wages is not sustainable in law and the same deserves to be set aside.

8. The petition is accordingly, partly allowed to the above extent. The order of the Labour Court is maintained so far as reinstatement is concerned. However, the order of payment of back wages and consequential benefits is set aside and quashed. No order as to costs.

Sd/-
Satish K. Agnihotri
Judge

Thakur